

# HOUSE BILL REPORT

## ESSB 5452

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**As Reported by House Committee On:**  
Early Learning & Children's Services

**Title:** An act relating to providing for reunification after termination of parental rights.

**Brief Description:** Providing for reunification after termination of parental rights.

**Sponsors:** Senate Committee on Human Services & Corrections (originally sponsored by Senator Rockefeller).

**Brief History:**

**Committee Activity:**

Early Learning & Children's Services: 3/29/07 [DPA].

**Brief Summary of Engrossed Substitute Bill**  
**(As Amended by House Committee)**

- Allows a dependent child to petition to have the parental rights of his or her parent reinstated.

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### HOUSE COMMITTEE ON EARLY LEARNING & CHILDREN'S SERVICES

**Majority Report:** Do pass as amended. Signed by 6 members: Representatives Kagi, Chair; Haler, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Appleton, Pettigrew and Roberts.

**Staff:** Sonja Hallum (786-7092).

**Background:**

Dependency Background

If there are allegations of abandonment, abuse or neglect, or no parent who is capable of caring for a child, the state may investigate the allegations and initiate a dependency proceeding in juvenile court. If the court finds the statutory requirements have been met, the court will find the child to be a dependent of the state.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Within 60 days of assuming responsibility for the child, the Department of Social and Health Services (DSHS) is required to provide the court with a permanency plan for the child. The permanency plan will contain the desired goal for the child which may include a plan to return the child home, adoption, long-term placement, or guardianship, including a dependency guardianship.

If the parent fails to make progress in curing the parental deficiencies which led to the dependency, or if one of the statutory aggravating factors exist, a termination petition may be filed. Federal law requires that after a child has been in foster care for 15 of the past 22 months, the state must file a petition to terminate parental rights unless the child is being cared for by relatives, there is a compelling reason why termination would not be in the best interest of the child, or the state has failed to offer the necessary services to the parent.

If the court finds the statutory grounds for termination are met, the court will terminate the parental rights and the parent will no longer have rights, privileges, or obligations toward the child.

### Governmental Liability

At common law, and under the State Constitution, government may generally remain immune from tort law based on negligence. The Legislature, however, has waived this governmental immunity and provided that generally, government is liable for its tortious conduct "to the same extent as if it were a private person or corporation."

Despite this general legislative policy of holding government liable to the same extent as private persons, the Legislature and the courts have both imposed limitations on government liability.

Under current statutes and common law doctrines, government has been held responsible for its negligent acts in some situations involving harm done by or to persons who are under government supervision or who are receiving government assistance or protection.

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### **Summary of Amended Bill:**

A dependent child who is at least 12 years old may petition the court to reinstate the previously terminated parental rights of his or her parent. The child will be provided counsel prior to the filing of the petition. In order to file the petition, three years must have passed since the parental rights were terminated, the child must not have been adopted, and the child's permanent plan must be adoption.

Once the petition is filed, notice will be given to the parents, DSHS, child's attorney, foster parent, and Tribe. The parents are entitled to counsel if they appear in court and are indigent. The court will hold a hearing and will conditionally grant the petition reinstating parental rights if the court finds the following by clear and convincing evidence:

- (1) the parental deficiencies which led to the termination of parental rights have been addressed to a degree that assures the court that the reinstatement of parental rights will not present a risk to the child's health, welfare, or safety;
- (2) the parent is currently able to care for the child such that placement with the parent will not present a risk to the child's health, welfare, or safety;
- (3) the child is no longer likely to be adopted; and
- (4) that reinstatement of parental rights is in the child's best interest.

If the court conditionally reinstates the parental rights, the child will be placed in the custody of the parent. The case will continue for at least one year and the DSHS will develop a permanency plan for the child reflecting the plan to be reunification. The DSHS must provide transition services to the family. The court must conduct at least two review hearings during the year to determine the status and well-being of the child.

If the child is successfully placed with the parent for a period of one year, the court order reinstating parental rights will remain in effect. However, if the child must be removed from the parent due to abuse or neglect, the court will dismiss the petition for reinstatement of parental rights.

The reinstatement of parental rights is a separate action from the termination of parental rights and does not vacate the termination of parental rights order that was previously entered. The order reinstates the parental rights to the child.

An immunity clause is added indicating that the state is not liable for civil damages resulting from any acts or omissions of a DSHS Children's Administration employee or agent who is involved in the delivery of child welfare services or child protective services, unless the act or omission constitutes gross negligence.

#### **Amended Bill Compared to Engrossed Substitute Bill:**

The amended bill changes the following provisions relating to the filing of the petition:

- the child must be at least 12 years of age in order to file the petition;
- the child's permanent plan must be adoption; and
- the petition must allege facts demonstrating the parent is fit and that reinstatement is in the best interests of the child.

The following are changes to the hearing procedure that are made in the amended bill:

- The two-step hearing process in the Senate bill is replaced by a single process in which the court reviews the petition and makes a determination as to whether to reinstate parental rights.
- If the court grants the petition, it is granted conditionally for one year. If the child is successfully placed with the parent for one year, the petition remains in effect; however, if the child must be removed due to abuse or neglect, the petition is dismissed.

Parents are permitted to be represented by counsel at no cost if they are indigent. The language removing the parent's obligation for child support owing to the DSHS is removed by the amended bill.

The immunity language in the amended bill is changed to allow immunity from civil liability to any Child Protective Services or Child Welfare Services worker who is providing child welfare or child protective services so long as they are not grossly negligent.

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**Appropriation:** None.

**Fiscal Note:** Requested on March 28, 2007.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill is a companion to SHB 1624. They share a concern of providing a better future to children. The public interest is served by ensuring that children have a better future. But, we need to be careful to not make the situation worse and need to take precautions. I am a mother of three children who have been removed and my oldest son has just found me and returned to me now that he is 21 years old. The age of the child should not matter. It should be left to the discretion of the court. The maturity level of children can differ and should be considered. Children can be damaged staying in foster care. This bill is necessary to give children a voice. The Senate version that doesn't require the permanent plan to only be adoption is preferable.

(Opposed) None.

**Persons Testifying:** Meri Lawrence; Mark Horberg; Elaine Wolcott-Ehrhardt, C.C. Tillet, and Stella Farrais, Washington Families United; Chet McVay; and Laurie Lippold, Children's Home Society of Washington.

**Persons Signed In To Testify But Not Testifying:** None.